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08/802,472 02/18/97 KORMANIK

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EXAMINER

LUBY, M

ART UNIT

PAPER NUMBER

3618

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UNITED STATES DEPARTMENT OF COMMERCE
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 30

Application Number: 08/802,472

Filing Date: 02/18/97

Appellant(s): Kormanik, Jr.

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Peter K. Tryzna
For Appellant

MAILED

FEB 27 2001

EXAMINER'S ANSWER

GROUP 3600

This is in response to appellant's brief on appeal filed 12/27/00.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

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A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims (5), (8-15, 17-28 and 31) and (29 and 30) do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,815,607

Agapiou

3-1989

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim 5, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Agapiou (4,815,607).

Agapiou discloses the claimed method for making a package and article including constructing the package as a "recognizable icon" (10) which has a shape different than the shape of the article inside (the package is a tire and the article is a toy - see Figure 3, for example) and is hollow (see Figure 2), the shape of the package visually conveying information about an activity associated with the icon (all shapes visually convey information about an activity associated with package; in this case the tire shape visually conveying information about a safety activity for learning about safety procedures around motor vehicles) and locating the article within the hollow interior of the package (col. 2, lines 4-6).

Claims 8-15 and 17-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agapiou.

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Agapiou discloses the claimed method including the package and article as described above including constructing the replica to receive writing from a pen or magic marker (see 30 - Figure 1). Agapiou does not particularly recite that the package resembles a particular ball, that the article is one of a wiping cloth, a rain coat, a rain vest, a golf bag cover, a ditty bag, a poncho, a hat and a seat cover; that the package is constructed as either a replica of a golf ball, a baseball, a life preserver, a football, a tennis ball, a soccer ball, a rugby ball or a charge/bank card and that the article is rain gear or any other item useful during the activity. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Agapiou reference by having the package resemble a particular ball, that the article is selected from the group including a wiping cloth, a rain coat, a rain vest, a golf bag cover, a ditty bag, a poncho, a hat and a seat cover; that the package is constructed as either a replica of a golf ball, a baseball, a life preserver, a football, a tennis ball, a soccer ball, a rugby ball or a charge/bank card and that the article is rain gear, since a person of ordinary skill in the art at the time of the invention would provide a package with an article inside to resemble objects useful to the target consumer(s) who would purchase these items. It is notoriously well known to place rain gear or any other article, for that matter, inside a package. Further it is also well known to construct that package to resemble a familiar symbol to the target consumer(s).

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(11) *Response to Argument*

The Appellant has argued on page 12 of the brief that “The Agapiou reference does not teach a tire-shaped package conveying information about ‘a safety activity’.” Agapiou clearly teaches exactly this and all one must to realize such is take a glimpse at Figure 1 and the title of the Agapiou invention “Safety Awareness Kit Including Toy Figures”.

The Appellant secondly argues on page 13 of the brief that “the Examiner has not indicated what information is conveyed and what safety activity is disclosed by the Agapiou [reference]”. The Examiner has done this in paragraph 4 of the Final Rejection (paper no. 20) where the information and safety activity conveyed is “a safety activity for learning about safety procedures around motor vehicles”.

The Appellant thirdly argues at page 14 of the brief that Agapiou’s tire does not teach a “a safety activity for learning about safety procedures around motor vehicles”. Agapiou teaches this in all of the figures and in the entire disclosure.

Appellant further argues that Agapiou does not teach the various replicas that are purportedly created by the claimed method on pages 21-34 of the brief. These arguments are not persuasive, inasmuch, as these numerous replicas are obvious variations that an ordinary skilled worker would create to resemble objects for sale to different target consumers (see paragraph 6 of the Final Rejection, paper no. 20).

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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February 25, 2001

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